APPENDIX "A"

The portion of the Opinion of the Special Court, dated April 3, 1941, pertaining to allowances is hereinafter set forth:

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PEORIA & EASTERN RAILWAY COMPANY, Petitioner.	IN PROCEEDINGS FOR A RAILROAD ADJUSTMENT No. 76,016

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III. *A.* By way of preface to the question of allowances, it seems to us appropriate to observe that a proceeding for a Railroad Adjustment under Chapter 15 of the Bankruptcy Act,—Title 11 United States Code, Sections 1200 to 1255—which is now terminated by reason of its own limitations,—Cf. Section 1255—was a proceeding commenced by a petition which was to be addressed in an appropriate *venue* to a Three-Judge Court given equity jurisdiction for a limited purpose, namely, to determine whether the adjustment sought by the petitioner was equitable and should be allowed. The Court did not take possession of any property or funds. The appearance of any other party than the petitioner in such a proceeding depends solely on the appropriate exercise of the judicial discretion of the Court, and any such party could come in only by way of intervention based on the intervenor's petition. For Chapter 15 of the Bankruptcy Act—Title 11 United States Code, Sections 1200-1255—does not provide for any adversary proceedings.

Consequently, it seems to us that we must look only to the provisions of Title 11 United States Code, Section 1225(6) to determine our jurisdictional competence to grant allowances.

Section 1225(6), in so far as it is relevant here, provides as follows (italics ours):

"That, after hearings for the purpose, all amounts or considerations, *directly or indirectly paid or to be paid by or for the petitioner* for expenses, fees, reimbursement or compensation of any character whatsoever incurred in connection with the proceeding and plan, or preliminary thereto or in aid thereof, together with all the facts and circumstances relating to the incurring thereof, have been fully disclosed to the Court so far as such amounts or considerations can be ascertained at the time of such hearings, that all such amounts or considerations are fair and reasonable, and to the extent that any such amounts or considerations are not then ascertainable, the same are to be so disclosed to the Court when ascertained, and are to be subject to approval by the special court as fair and reasonable, and except with such approval no amounts or considerations covered by this clause (6) shall be paid."

B. Under the broad language of Title 11 United States Code, Section 1225(6), above quoted, we think we have power to deal with the expenses and allowances to the petitioner and the counsel for the Indenture Trustee.

We find that the expenses above detailed are fair and reasonable as required by that Section. We also allow fees to the counsel for the Indenture Trustee, which we fix at the sum of Two thousand dollars ($2,000).

C. The petitions for allowances made by the counsel for the intervenors are, however, in all respects denied for want of jurisdiction.

It seems to us clear that Chapter 15 of the National Bankruptcy Act covering Railroad *Adjustments,* in so far

as allowances to others than the petitioner Railway are concerned, is not in *pari materia* with Title 11 United States Code, Section 205, which deals with the *Reorganization* of Railroads. That Section provides, in so far as it is here relevant, as follows (italics ours):

"(c) * * * (12) Within such maximum limits as are fixed by the Commission*, the judge may make an allowance * * * for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by *parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders,* and within such limits may make an allowance out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries and such assistants as the Commission with the approval of the Judge may especially employ. * * *"

It will be seen, therefore, that a special mandate is given to the Judge, in a reorganization proceeding under the Section quoted, to make allowances for reasonable expenses, including reasonable attorney's fees incurred in connection with the proceeding and plan by the parties interested, and also including committees of creditors.

It seems to us that the omission of such a provision from Chapter 15 of the National Bankruptcy Act, which gave a Three-Judge Court jurisdiction in *Proceeding for Railway Adjustment,* makes it quite clear that we have not any jurisdiction properly to grant any allowances herein to the intervenors or their counsel.

This result was reached by a Three-Judge Court in the District of Maryland *In re Baltimore & Ohio R. R. Co.,* 34 F. Supp. 154, 160; and we are told also in the Eastern District of Pennsylvania in the case of *In re Lehigh Valley Railroad Company,* 34 F. Supp. 753. In that case the

* The Interstate Commerce Commission.

Baltimore & Ohio case is not mentioned in the opinion, but it is cited with approval in an order which was entered on October 21, 1940, denying petitions for compensation to counsel representing the security holders.

In the *Baltimore & Ohio* case, 34 F. Supp. 154, Judge Chestnut, speaking for a Three-Judge Court constituted under Chapter 15 and consisting of Parker and Dobie, Circuit Judges, and himself, gives at page 160 a very good reason why a Three-Judge Court, under Chapter 15 of the National Bankruptcy Act, has not jurisdiction to grant allowances to intervenors: namely, that it is not a court of equity with general jurisdiction over property or a fund in Court with the incidental power to make allowances to parties who have helped secure or conserve that property or fund, but is a court of equity which is limited to a personal jurisdiction only by the statute, which provides for its creation, and fixes its jurisdictional competence.

We cannot, however, close our opinion without telling counsel for the two intervenors that we welcomed their participation in this cause, that by the modifications in the plan which they suggested, in our opinion, they made a valuable contribution to the creation of a fair and reasonable adjustment herein under which the parties will have to operate for many years to come, and that if we had felt that we were authorized by Chapter 15 of the National Bankruptcy Act to grant them or their counsel a reasonable allowance, we should have done so.

April 3, 1941.